

Court of Appeals, State of Michigan

ORDER

People of MI v Cheryl Jean Stevens

Docket No. 282958

LC No. 07-002223-FH

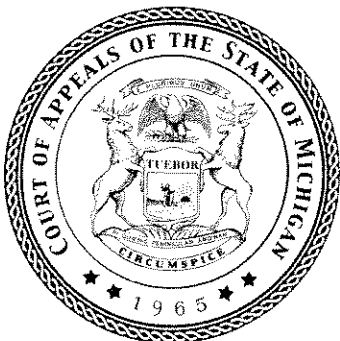
Christopher M. Murray
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

The Court, in lieu of granting the delayed application for leave to appeal, and pursuant to MCR 7.205(D)(2), hereby VACATES defendant's sentence and REMANDS for resentencing. The trial court's sole reason for deviating from the sentencing guideline was to "deter others in the community who might be similarly inclined" to commit the same offense. How the defendant's sentence will impact others is a purely subjective factor, and to be a permissible consideration, the factor must be an objective or verifiable one. *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003). The prosecutor did, however, argue at sentencing that an upward deviation was warranted because the amount defendant embezzled well exceeded the amount contemplated by the guidelines. See MCL 769.34(3)(b); *Babcock, supra*. This would be an objective and verifiable factor. However, this Court cannot determine from the record made whether the trial court considered this factor in sentencing the defendant. On remand, the trial court is, of course, entitled to resentence defendant as it deems appropriate so long as it follows the commands of *People v Babcock*.

The delayed application is DENIED in all other respects.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 8 2008

Date

Sandra Schultz Mengel
Chief Clerk